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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Intent to publish a supplemental notice of proposed rulemaking.

SUMMARY: On February 9, 2015, the Administration for Children and Families (ACF) published a Notice of Proposed Rulemaking (NPRM) to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations to modify the requirements for title IV-E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV-E subsidized adoption or guardianship agreement. However, we did not propose that title IV-E agencies report data in AFCARS on American Indian and Alaskan Native children related to the Indian Child Welfare Act of 1978 (ICWA). In this notice, we are announcing that we intend to publish a supplemental notice of proposed rulemaking (SNPRM), which will propose that title IV-E agencies collect and report additional ICWA-related data elements in AFCARS. We will consider the public comments on

that SNPRM (related to ICWA-related data elements) and the February 9, 2015 NPRM (related to all other data elements) and issue one final rule on AFCARS.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], ACF announces its intent to issue a SNPRM.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Children's Bureau, Administration on Children, Youth and Families, (202) 401-5789 or by email at cbcomments@acf.hhs.gov. Do not email comments on the NPRM to this address.

SUPPLEMENTARY INFORMATION: The Children's Bureau (CB) issued a Notice of Proposed Rulemaking (NPRM) on February 9, 2015 (80 FR 7132) (hereafter referred to as the 2015 NPRM) to modify the requirements for title IV-E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV-E subsidized adoption or guardianship agreement with the title IV-E agency. In that NPRM, we proposed to revise and update the AFCARS regulations at 45 CFR 1355.40 et seq. and the appendices to part 1355. However, we did not propose data elements that would provide information in AFCARS on American Indian and Alaskan Native children related to the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.) (ICWA).

We received comments to a previous NPRM and on a Federal Register Notice recommending data elements to address ICWA requirements. In the *Tribal Consultation Statement* section of the preamble to the 2015 NPRM, we acknowledged that we received comments asking for additional data elements that would address ICWA requirements and provide a comprehensive picture of the well-being of tribal children including: identifying whether a child is a member of

an Indian tribe and the name of the Indian tribe, tribal notification, whether a tribal title IV-E agency intervened in a state title IV-E agency case, cultural activities that the child is participating in while away from his or her parents, judicial findings of active efforts, and preferential treatment for tribal placement resources. However, we did not propose in the 2015 NPRM to collect information related to ICWA because the enabling statute for AFCARS (section 479 of the Social Security Act (the Act)) had been interpreted as limiting data collection to information related to the title IV-B and IV-E program requirements.

Upon further consideration following the publication of the 2015 NPRM, we have determined that there is authority under the statute (section 479(c) of the Act) to collect ICWA-related data in AFCARS. Specifically, the statute permits broader data collection in order to assess the current state of adoption and foster care programs in general, as well as to develop future national policies concerning those programs. However, the statute includes limits on this broad interpretation of section 479 of the Act that we must take into consideration when contemplating collecting data related to ICWA in AFCARS, including: data collected under AFCARS must avoid an unnecessary diversion of resources from child welfare agencies (see section 479(c)(1) of the Act) and must assure the reliability and consistency of the data (see section 479(c)(2) of the Act).

Dated: March 25, 2015.

Mark H. Greenberg,
Acting Assistant Secretary for
Children and Families.

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